

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:BOS:POSTF-165729-01

BJLaterman

date:

2/20/02

to: LMSB: Team Manager, Group 1545, Stoneham, Massachusetts
Att: Debbie Morrill

from: Associate Area Counsel, Boston
CC:LMSB:FS:BOS

subject:

Form 872

Taxable Years ended June 30, [REDACTED] and [REDACTED]

Statute of Limitations: [REDACTED]

This memorandum responds to your request for advice dated December 4, 2001, regarding extending the statute of limitations for the above-mentioned consolidated group's taxable years ended June 30, [REDACTED] and [REDACTED]. This memorandum should not be cited as precedent.

[REDACTED] (EIN [REDACTED]) is a Delaware corporation. It was the parent of an affiliated group which filed consolidated federal income tax returns for the taxable years ended June 30, [REDACTED] and [REDACTED]. [REDACTED] (now known as [REDACTED]) is a Massachusetts corporation which files consolidated federal income tax returns.

On [REDACTED], [REDACTED] acquired [REDACTED] consolidated group pursuant to an "Agreement and Plan of Merger." The "Agreement and Plan of Merger" provided for the acquisition of [REDACTED] stock by a wholly owned subsidiary of [REDACTED]. The acquisition subsidiary then merged into [REDACTED] with [REDACTED] as the surviving corporation retaining EIN [REDACTED]. After the acquisition, [REDACTED] filed as members of [REDACTED] (formerly known as [REDACTED]) consolidated group's [REDACTED] federal income tax return. [REDACTED] filed its final federal income tax return for the taxable year ended [REDACTED].

Your office is currently considering the consolidated returns of [REDACTED] for the taxable years ended June 30, [REDACTED] and [REDACTED] and has requested advice regarding extending the statute of limitations for said taxable years.

Generally the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas.Reg. §1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each such subsidiary. Treas.Reg. §1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas.Reg. §1.1502-77 shall apply whether or not consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas.Reg. §1.1502(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect of the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas.Reg. §1.1502-6(a).

Temporary Regulation §1.1502-77T(a)(4) provides for agents if the common parent ceases to be the common parent of the consolidated group, whether or not the consolidated group remains in existence. Pursuant to Temporary Regulations §1.1502-77(T)(a)(4)(i), an agent for the group is "the common parent of the group for all or any part of the year to which the notice or waiver applies." Temporary Regulation §1.1502-77T(a)(4) is applicable to waivers of the statute of limitations for taxable years for which the due date without extensions of the consolidated return is after September 7, 1988. Temp.Reg. §1.1502-77T(b). Therefore, said regulations provision is applicable in this case.

In this case, the common parent taxpayer, [REDACTED] is still in existence and, therefore, is the agent for the consolidated group in existence for the taxable years

ended June 30, [REDACTED] and [REDACTED] under the provisions of Temporary Regulation §1.1502-77T(a)(4)(i). Therefore, based on the facts provided, we conclude that the Form 872 should be executed by a current officer of [REDACTED]. The caption on the Form 872 should be as follows: [REDACTED]. * At the bottom of the page, you should add, by way of explanation, the following statement: *This is with respect to the consolidated federal income tax liability of [REDACTED] consolidated group for the group's taxable years ended June 30, [REDACTED] and [REDACTED].

The signature block on the Form 872 should read as follows:

Name of Officer
Title of Officer
[REDACTED]

Please insure that the [REDACTED]'s EIN is recorded in the box indicated on the Form 872.

As a final matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual (IRM). Specifically, IRM 121.2.22.3 requires use of Letter 907 (DO) to solicit the Form 872, and IRM 121.2.22.4.2 requires use of Letter 929 (DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the authorized manager should promptly sign and date it in accordance with Treas.Reg. §301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event that Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that §3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. §6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy the requirement, Publications 1035, "Extending the Tax Assessment Period," must be given when you solicit the statute extension.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If we can be of any further assistance, the undersigned can be reached at (617) 565-7855.

BARRY J. LATERMAN
Special Litigation Assistant